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07/11/2006

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EXAMINER

BATISTA, MARCOS

ART UNIT

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2617

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DELIVERY MODE

12/31/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/585,891	<b>Applicant(s)</b> VAU ET AL.	
	<b>Examiner</b> MARCOS BATISTA	<b>Art Unit</b> 2617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 03 October 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)         | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. This Action is in response to Applicant's amendment filed on 10/03/2009. Claims 1-18 are still pending in the present application. This Action is made **FINAL**.

### **Response to Argument**

2. Applicant's arguments with respect to claims 1 and 13 have been considered but are moot in view of the new ground(s) of rejection.

### ***Response to Arguments***

3. Applicant's arguments filed on 10/03/2009 with respect to claim 12 have been fully considered but they are not persuasive.

After carefully revising the office action pertinent to the present response and remarks, the following main point(s) have been identified:

**1)** The Applicant states that the combination of Harma and Kanamaru failed to teach "*the code data of the programming agent are automatically destroyed when the programming agent is deactivated*" (refer to pages 10 and 11 of the Applicant's remarks).

Regarding point **1)**, Kanamaru, at paragraphs 49 and 50 teaches stopping (i.e., deactivating) the execution of a program and deleting the program when a completion notification is received. This clearly suggests that the program is deactivated and then

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deleted when it is determined that it is not longer needed in response to the notification message.

Kanamaru, Paragraph 49:

“[0049] The program execution stopping section 37 is implemented as a processor within the terminal device 3. **In summary, the program execution stopping section 37 performs a process which involves, in response to a service completion notice Nst from the service completion notification section 13,** instructing the program execution section 35 as to which program P is to be closed, as will be specifically described later with reference to FIG. 11.”

Kanamaru, Paragraph 50:

“[0050] The program deletion section 38 is implemented as a processor within the terminal device 3. **In summary, the program deletion section 38 performs a process which involves, in response to the aforementioned service completion notice Nst,** deleting a program P which is no longer needed from the program storage section 31, as will be specifically described later with reference to FIG. 12.”

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Therefore, the argued features are written such that they read upon the cited reference(s).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 1, 5-8, 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harma et al. (US 2001/0053691 A1), hereafter "Harma," in view of Coulombe et al. (US 20050021834 A1), hereafter "Coulombe."

Re claim 1, Harma discloses a communication method between at least two terminals (10A, 10B) (paragraph 11), and based on the sending from a first terminal (10A) to at least one second terminal (10B) (paragraph 40) of a multimedia message (paragraph 7; games can be construed as multimedia messages) comprising a programming agent (36) including an encoded program for undertaking a desired function at the at least one second terminal (10B), consisting in starting, using the programming agent, the establishment of a phone link between the first terminal (10A) and the at least one second terminal (10B) (paragraph 38 and 40; a phone link is established in order to communicate using SMS and MMS; the program agent or software is downloaded and installed before the game can start).

Harma, however, does not particular refer to automatically starting the establishment of a phone link in response to receiving an initial multimedia message.

Coulombe, in analogous art, teaches automatically starting the establishment of a phone link in response to receiving an initial multimedia message (paragraph 30, fig. 2).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the invention of Harma and have it include automatically starting the establishment of a phone link in response to receiving an initial multimedia message, as taught by Coulombe. The motivation would have been to prepare the

communication device to establish a network link without user intervention (paragraph 30, fig. 2).

Re claim 5, Harma as modified by Coulombe discloses the communication method according to claim 1. Harma also discloses characterized in that the programming agent also automatically starts the display of a video sequence on the second terminal (10B) (paragraph 7 discloses that visual objects such as films and animations are included under the term “recreational application” and therefore a video sequence would play upon implementation of the application).

Re claim 6 Harma as modified by Coulombe discloses the communication method according to claim 1. Harma also discloses characterized in that the programming agent also automatically starts, on the second terminal (10B), the forming of a multimedia message comprised of digital data of image, text, sound and encoded data of the programming agent (paragraph 42; playing of the game involves multimedia messaging); the multimedia message being intended to be sent automatically to the first terminal (10A) (paragraph 42; the game involves back and forth multimedia messaging).

Re claim 7, Harma as modified by Coulombe discloses the communication method according to claim 6. Harma also discloses characterized in that the multimedia message sent automatically to the first terminal (10A) comprises digital data, for example of image, text, or sound, and encoded data specific to the programming agent (paragraph 42; playing of the game involves multimedia messaging).

Re claim 8, Harma as modified by Coulombe discloses the communication method according to claim 7. Harma also discloses characterized in that the digital data, for example of image, text, or sound are contextual data specific to user of the second terminal (10B) (paragraph 42, 3, and 7; the second terminal sends multimedia game messages that are announced by the user).

Re claim 11, Harma as modified by Coulombe discloses the communication method according to claim 6. Harma also discloses characterized in that the multimedia message sent from the second terminal (10B) to the first terminal (10A) is automatically displayed on the first terminal (10A) (paragraph 42; playing of the game involves multimedia messaging).

8. Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harma et al. (US 2001/0053691 A1), hereafter "Harma," in view of Coulombe et al. (US 20050021834 A1), hereafter "Coulombe," further in view of Tornqvist (Patent Number: 6,055,424), hereafter "Tornqvist."

Re claim 2, Harma as modified by Coulombe discloses the communication method according to claim 1, but fails to disclose characterized in that the phone link consists in the activation, using the programming agent, of the voice channel and the loudspeaker of the second terminal.



However, Tornqvist discloses characterized in that the phone link consists in the activation, using the programming agent, of the voice channel and the loudspeaker of the second terminal (column 12, lines 56 – 62; column 16, lines 48 - 52).

Motivation to combine may be gleaned from the prior art contemplated. Therefore, one skilled in the art would have found it obvious from the combined teachings of “Harma as modified by Coulombe” and “Tornqvist” as a whole to produce the invention as claimed with a reasonable expectation of characterized in that the phone link consists in the activation, using the programming agent, of the voice channel and the loudspeaker of the second terminal for the benefit of alerting the user once the message has been downloaded.

Re claim 3, Harma as modified by Coulombe discloses the communication method according to claim 1, but fails to disclose characterized in that the phone link between the first and second terminal is a wireless link, such as GSM, or GPRS.

However, Tornqvist discloses characterized in that the phone link between the first and second terminal is a wireless link, such as GSM, or GPRS (column 3, lines 1 – 9; mention the use of a GSM system).

Motivation to combine may be gleaned from the prior art contemplated. Therefore, one skilled in the art would have found it obvious from the combined teachings of “Harma as modified by Coulombe” and “Tornqvist” as a whole to produce the invention as claimed with a reasonable expectation of characterized in that the

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phone link between the first and second terminal is a wireless link, such as GSM, or GPRS for the benefit of using a popular standard for mobile phones.

Re claim 4, Harma as modified by Coulombe discloses the communication method according to claim 1, but fails to disclose characterized in that the programming agent also automatically starts an audible alarm on the second terminal (10B).

However, Tornqvist discloses characterized in that the programming agent also automatically starts an audible alarm on the second terminal (10B) (column 12, lines 56 - 62).

Motivation to combine may be gleaned from the prior art contemplated. Therefore, one skilled in the art would have found it obvious from the combined teachings of "Harma as modified by Coulombe" and "Tornqvist" as a whole to produce the invention as claimed with a reasonable expectation of characterized in that the programming agent also automatically starts an audible alarm on the second terminal (10B) for the benefit of alerting the user once the message has been downloaded.

9. Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harma et al. (US 2001/0053691 A1), hereafter "Harma," in view of Coulombe et al. (US 20050021834 A1), hereafter "Coulombe," further in view of Hunter (US 2004/0005915 A1), hereafter "Hunter."

Re claim 9, Harma as modified by Coulombe discloses the communication method according to claim 8, but fails to disclose characterized in that the contextual

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data are collected on a third terminal (15) capable of communicating with the second terminal (10B) by a link (14), such as Bluetooth or Wifi.

However, Hunter discloses characterized in that the contextual data are collected on a third terminal (15) capable of communicating with the second terminal (10B) by a link (14), such as Bluetooth or Wifi (paragraph 9).

Motivation to combine may be gleaned from the prior art contemplated. Therefore, one skilled in the art would have found it obvious from the combined teachings of “Harma as modified by Coulombe” and “Hunter” as a whole to produce the invention as claimed with a reasonable expectation of characterized in that the contextual data are collected on a third terminal (15) capable of communicating with the second terminal (10B) by a link (14), such as Bluetooth or Wifi for the benefit of transferring images from the third terminal to the camera.

Re claim 10, Harma as modified by Coulombe discloses the communication method according to claim 9, but fails to disclose characterized in that the third terminal is a camera (15) capable of recording a video clip.

However, Hunter discloses characterized in that the third terminal is a camera (15) capable of recording a video clip (paragraph 2, 9, 16, 38, and 39).

Motivation to combine may be gleaned from the prior art contemplated. Therefore, one skilled in the art would have found it obvious from the combined teachings of “Harma as modified by Coulombe” and “Hunter” as a whole to produce the invention as claimed with a reasonable expectation of characterized in that the third

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terminal is a camera (15) capable of recording a video clip for the benefit of video phone capability.

10. Claims 12, 13, 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harma et al. (US 2001/0053691 A1), hereafter "Harma," in view of Coulombe et al. (US 20050021834 A1), hereafter "Coulombe," further in view of Kanamaru (US 2003/0134623 A1), hereafter "Kanamaru."

Re claim 12, Harma as modified by Coulombe discloses the method according to claim 7, but fails to disclose characterized in that the code data of the programming agent are automatically destroyed when the programming agent is deactivated.

However, Kanamaru discloses characterized in that the code data of the programming agent are automatically destroyed when the programming agent is deactivated (paragraph 50).

Motivation to combine may be gleaned from the prior art contemplated. Therefore, one skilled in the art would have found it obvious from the combined teachings of "Harma as modified by Coulombe" and "Kanamaru" as a whole to produce the invention as claimed with a reasonable expectation of characterized in that the code data of the programming agent are automatically destroyed when the programming agent is deactivated for the benefit of saving storage space on the mobile.

Re claim 13, Harma discloses communication between at least two terminals (I0A, I0B) comprising the steps of (paragraph 11): sending a multimedia message (paragraph 7; games can be construed as multimedia messages) comprising a programming agent (36) having an encoded program for undertaking a desired function to at least one second terminal (I0B) (paragraph 40); starting the programming agent upon receipt of the multimedia message at the at least one second terminal and establishing a data communications link between the first terminal (I0A) and the at least one second terminal (I0B) (paragraph 38 and 40; a phone link is established in order to communicate using SMS and MMS; the program agent or software is downloaded and installed before the game can start).

Harma, however, does not particular refer to automatically starting the establishment of a phone link in response to receiving an initial multimedia message.

Coulombe, in analogous art, teaches automatically starting the establishment of a phone link in response to receiving an initial multimedia message (paragraph 30, fig. 2).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the invention of Harma and have it include automatically starting the establishment of a phone link in response to receiving an initial multimedia message, as taught by Coulombe. The motivation would have been to prepare the communication device to establish a network link without user intervention (paragraph 30, fig. 2).

Harma, as modified by Coulombe however, does not particular refer to deactivating the programming agent at the least one second terminal (1 0B) and automatically destroying the encoded program of the programming agent upon deactivation.

Kanamaru discloses deactivating the programming agent at the least one second terminal (1 0B) and automatically destroying the encoded program of the programming agent upon deactivation (paragraphs 49 and 50).

Motivation to combine may be gleaned from the prior art contemplated. Therefore, one skilled in the art would have found it obvious from the combined teachings of “Harma as modified by Coulombe” and “Kanamaru” as a whole to produce the invention as claimed with a reasonable expectation of characterized in that the code data of the programming agent are automatically destroyed when the programming agent is deactivated for the benefit of saving storage space on the mobile.

Re claim 17, Harma as modified by Coulombe and Kanamaru discloses the communication method according to claim 13. Harma also discloses characterized in that the programming agent also automatically starts the display of a video sequence on the second terminal (10B) (paragraph 7 discloses that visual objects such as films and animations are included under the term “recreational application” and therefore a video sequence would play upon implementation of the application).

Re claim 18 Harma as modified by Coulombe and Kanamaru discloses the communication method according to claim 1. Harma also discloses characterized in that the programming agent also automatically starts, on the second terminal (10B), the forming of a multimedia message comprised of digital data of image, text, sound and encoded data of the programming agent (paragraph 42; playing of the game involves multimedia messaging); the multimedia message being intended to be sent automatically to the first terminal (IOA) (paragraph 42; the game involves back and forth multimedia messaging).

11. Claims 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harma et al. (US 2001/0053691 A1), hereafter "Harma," in view of Coulombe et al. (US 20050021834 A1), hereafter "Coulombe," further in view of Kanamaru (US 2003/0134623 A1), hereafter "Kanamaru," further in view of Tornqvist (Patent Number: 6,055,424), hereafter "Tornqvist."

Re claim 14, Harma as modified by Coulombe and Kanamaru discloses the communication method according to claim 13, but fails to disclose characterized in that the phone link consists in the activation, using the programming agent, of the voice channel and the loudspeaker of the second terminal.

However, Tornqvist discloses characterized in that the phone link consists in the activation, using the programming agent, of the voice channel and the loudspeaker of the second terminal (column 12, lines 56 – 62; column 16, lines 48 - 52).

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Motivation to combine may be gleaned from the prior art contemplated.

Therefore, one skilled in the art would have found it obvious from the combined teachings of “Harma as modified by Coulombe and Kanamaru” and “Tornqvist” as a whole to produce the invention as claimed with a reasonable expectation of characterized in that the phone link consists in the activation, using the programming agent, of the voice channel and the loudspeaker of the second terminal for the benefit of alerting the user once the message has been downloaded.

Re claim 15, Harma as modified by Coulombe and Kanamaru discloses the communication method according to claim 13, but fails to disclose characterized in that the phone link between the first and second terminal is a wireless link, such as GSM, or GPRS.

However, Tornqvist discloses characterized in that the phone link between the first and second terminal is a wireless link, such as GSM, or GPRS (column 3, lines 1 – 9; mention the use of a GSM system).

Motivation to combine may be gleaned from the prior art contemplated.

Therefore, one skilled in the art would have found it obvious from the combined teachings of “Harma as modified by Coulombe and Kanamaru” and “Tornqvist” as a whole to produce the invention as claimed with a reasonable expectation of characterized in that the phone link between the first and second terminal is a wireless link, such as GSM, or GPRS for the benefit of using a popular standard for mobile phones.



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Re claim 16, Harma as modified by Coulombe and Kanamaru discloses the communication method according to claim 13, but fails to disclose characterized in that the programming agent also automatically starts an audible alarm on the second terminal (10B).

However, Tornqvist discloses characterized in that the programming agent also automatically starts an audible alarm on the second terminal (10B) (column 12, lines 56 - 62).

Motivation to combine may be gleaned from the prior art contemplated. Therefore, one skilled in the art would have found it obvious from the combined teachings of “Harma as modified by Coulombe and Kanamaru” and “Tornqvist” as a whole to produce the invention as claimed with a reasonable expectation of characterized in that the programming agent also automatically starts an audible alarm on the second terminal (10B) for the benefit of alerting the user once the message has been downloaded.

### ***Conclusion***

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Marcos Batista, whose telephone number is (571) 270-5209. The Examiner can normally be reached on Monday-Thursday from 8:00am to 5:00pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Rafael Pérez-Gutiérrez can be reached at (571) 272-7915. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you

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have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free) or 703-305-3028.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist/customer service whose telephone number is (571) 272-2600.

*/Marcos Batista/*

Examiner

12/29/2009

/KAMRAN AFSHAR/

Primary Examiner, Art Unit 2617